IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO.154 OF 2005

STATE OF GOA ....Applicant
Versus
REMEDIOS FERNANDES AND ANR. .....Respondent

Mrs. Winnie Coutinho, Public Prosecutor for the Applicant.

Mr. Arun Bras de Sa, Advocate for the Respondents.

CORAM:- N.A. BRITTO,J.
Date:- 31st August, 2005

P.C.

The accused in C.C. No.65/S/03/II have been acquitted under Sections 452, 324, 504 r/w. 34 I.P.C. by the learned Judicial Magistrate, First Class, Margao vide judgment / order dated 17.11.04 and the State has sought leave to file an appeal against the said acquittal.

2. The case of the prosecution was that on 8.12.2002 at about 2.45 hours both the accused in furtherance of common intention had committed house trespass into the house of Pw.3 Luciana Rodrigues having made preparations for causing hurt to her husband namely, Pw.2 Pedro Paulo Rodrigues and further in furtherance of the said common intention had caused hurt to the said Pw.2 Pedro Paulo Rodrigues with laterite stones and had

also insulted the said Pw.3 Luciana and her said husband Pw.2 Pedro Paulo Rodrigues

3. Charge having been framed against the said accused under the said Sections, prosecution examined several witnesses and the entire case of the prosecution rested on the evidence of the said injured Pw.2 Pedro Paulo Rodrigues, his wife Pw.3 Luciana Rodrigues, his sister Pw.4 Bevinda Rodrigues and a close neighbour of theirs namely Pw.5 Maria Pereira. Pw.6 and Pw.7 were the Medical Officers and Pw.8 the Investigating Officer. The learned J.M.F.C. after considering the evidence produced by the prosecution in support of the charge, came to the conclusion that the case of the prosecution was not free from doubt and therefore gave benefit of doubt to the accused and acquitted them.

4. It appears that the incident took place at about 8.45 p.m. on 8.12.02 while the complaint regarding the incident was lodged on the next day at about 11.00 hrs. from Pw.3 Luciana. Neither Pw.2 Pedro Paulo Rodrigues nor for that matter Pw.3 Luciana explained regarding the delay in filing the said F.I.R., in spite of the fact that Pw.4 Bevinda had clearly stated that on the night of the incident itself at about 9.30 p.m., she had called the Police Station and two policemen had come to the scene and in

spite of that she had not told the police to record her complaint and her statement was recorded on the next date. If the incident took place in the veranda where Pw.2 Pedro Paulo Rodrigues was present, according to Pw.2 Pedro Paulo Rodrigues, his wife and his sister namely Belinda and Pw.4 Bevinda were inside the house. And if Pw.3 Luciana and Pw.4 Bevinda were inside the house they could certainly not have seen the incident stated by them. If Pw.2 Pedro Paulo Rodrigues had stated that the accused had assaulted him with laterite stones on his head, near the eye and back thereby giving an impression that he was assaulted by them directly with stones in their hands, Pw.3 had stated that the stones were thrown by the accused from a close distance and some of the stones fell on her also. Pw.5 Maria Pereira who is a close neighbour of Pw.2 Pedro Paulo Rodrigues stated in her evidence that after hearing the noise she went to the house of the complainant where she met Pw.4 Bevinda and when she asked her, she informed her that someone had thrown the stones and had run away and that she had not seen the person who had thrown the said stones. It becomes evident from her evidence that the very first version of the incident was that someone had thrown the stones and it was not known as to who had thrown them. It is in this background

that the delay in lodging the F.I.R. without explanation assumes significance. There are also other material omissions in the evidence of Pw.2 Pedro Paulo Rodrigues and Pw.3 Luciana and Pw.4 Bevinda and contradictions in the narration given by them relating to the incident. In my view considering the evidence led by the prosecution, the conclusion arrived at by the learned J.M.F.C. could not at all be faulted. This is not a fit case to grant leave to appeal. Hence this application is rejected.

N.A. BRITTO,J.

/vpf.